

**REMARKS**

Claims 1-22 remain pending in this application with claim 12 being amended by this response.

Applicant wishes to thank the Examiner for the courtesy extended in the telephone conversation with Kenneth R. Glick on January 18, 2005.

**Rejection of Claims 12-16 under 35 U.S.C. 112, second paragraph**

Claims 12-16 are rejected under 35 U.S.C. 112 second paragraph as being indefinite. The claims have been amended in accordance with the comments of the Examiner to clarify the steps of measuring a transmit power level and making use of the measure level in a design process.

In view of the above remarks and amendments to the claims it is respectfully submitted that this rejection is satisfied and should be withdrawn.

**Rejection of Claims 12-16 under 35 U.S.C. & 102(e)**

Claims 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Olafsson (U.S. Pat.6,163,570).

The present invention as claimed in claim 12 provides a method for controlling a transmit power of either of the modems in a PCM modem system, including an analog modem coupled to a digital modem. The method measures a transmit power level of at least one of the analog modem and the digital modem. The measured transmit power level is used as a parameter in designing a constellation.

Olafsson discloses a pulse code modulation modem system which utilizes the same total average transmit power formula for designing signal point constellations and for verifying that the transmit power of the signal point constellations are within a

designated maximum power limit. The transmit power of the signal point constellations designed by the client modem is also calculated by the server modem to verify that the transmit power limit imposed upon the server modem is not exceeded.

The Examiner suggests that Olafsson discloses a method for controlling the transmit power of the analog modem comprising using a measured transmit power level of at least one of the modems as a parameter in designing a constellation. The applicant respectfully contends that Olafsson does not have a measuring step. Although Olafsson uses a "transmit power limit" and a "transmit power formula" (See column 5, line 38), neither of these are measured. Olafsson discloses performing a calculation and verifying that calculation. However, Olafsson neither discloses nor suggests "measuring a transmit power level of at least one of the analog modem and the digital modem; and using the measured transmit power level as a parameter in designing a constellation" as claimed in claim 12 of the present invention. In view of the above remarks and amendments to claim 12 it is respectfully submitted that claim 12 is neither anticipated by nor obvious in view of Olafsson.

As claim 13 and 14 are dependant on independent claim 12 it is respectfully submitted that claims 13-16 are allowable for the same reasons as discussed above in reference to claim 12.

In view of the above remarks and amendments to the claims it is respectfully submitted that there is no 35 USC 112 compliant enabling disclosure in Olafsson showing the above discussed features. It is thus further respectfully submitted that claims 12-16 are not anticipated by Olafsson. It is thus, further respectfully submitted that this rejection is satisfied and should be withdrawn.

Claims 1-11 and 17-22 are indicated as allowed. In view of the above remarks it is respectfully submitted that claims 12-16 are also allowable.

The applicant respectfully submits, in view of the above arguments, that the all arguments made by the Examiner have been addressed and this rejection should be

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withdrawn. Therefore, the applicant respectfully submits that the present claimed invention is patentable.

No additional fee is believed due. However, if an additional fee is due, please charge the additional fee to Deposit Account 50-2828.

Respectfully submitted,  
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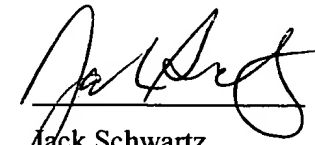
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Date: January 26, 2005

  
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